

1 COMMONWEALTH OF PENNSYLVANIA: IN THE COURT OF COMMON PLEAS
2 : OF DAUPHIN COUNTY, PENNSYLVANIA
3 VS :
4 TYSHAUNT LOVE : No. 937 CR 2002
5

6 TRANSCRIPT OF PROCEEDINGS

7 VOLUME III
8

9 BEFORE: HONORABLE BRUCE F. BRATTON

10 DATE: Friday, September 16, 2005
11 Monday, September 19, 2005
12 Tuesday, September 20, 2005

13 PLACE: Courtroom No. 3
14 Dauphin County Courthouse
15 Harrisburg, Pennsylvania

16 APPEARANCES:

17 SEAN M. McCORMACK, Esquire
18 Chief Deputy District Attorney

19 JAMES P. BARKER, Esquire
20 Deputy District Attorney

21 For - Commonwealth

22 PAUL W. MULLER, Esquire
23 Chief Deputy Public Defender

24 NATHAN C. GIUNTA, Esquire
25 Assistant Public Defender

For - Defendant

COPY

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1 Friday, September 16, 2005

2 Morning Session

3
4 MR. BARKER: Before we begin the hearing on the
5 admissibility of Guillermina Cruz's preliminary hearing
6 transcript, I think there are a couple of matters to
7 clear up ahead of time. The first thing is one of the
8 cases that was provided to us as authority yesterday,
9 Commonwealth versus C.A.N.D.L.E.S, 778 A Second 7131,
10 C-A-N-D-L-E-S, that's been vacated. We would suggest
11 if the Court was planning on relying on that, you may
12 want to rely on the newer investigation, which is a
13 2005 Westlaw 18 1996 1.

14 MR. MULLER: I would note that that case was just
15 concluded because it was referring to the Johnson case,
16 which is the case we are relying on and gives another
17 explanation of the Johnson opinion.

18 THE COURT: All right. Let's deal with this -- don't
19 we need to make a record first to determine the
20 preliminary matter of availability?

21 MR. BARKER: Yes, Your Honor. I just simply
22 wanted to clear that up. If Your Honor wants to
23 segregate the hearing, do availability first.

24 THE COURT: That's the sine qua non.

25 MR. BARKER: Commonwealth calls Chief John

1 Goshert.

2
3 JOHN GOSHERT,
4 having been sworn, was examined and testified as
5 follows:

6
7 DIRECT EXAMINATION

8
9 BY MR. BARKER:

10 Q Please state your full name and spell your
11 last.

12 A John Goshert, G-O-S-H-E-R-T.

13 Q How are you employed?

14 A I'm a detective with the Dauphin County
15 Criminal Investigation Division.

16 Q What is your rank?

17 A I'm the chief county detective.

18 Q Now, as part your duty, did you begin
19 conducting an investigation into the whereabouts of
20 Guillermina Cruz?

21 A I did.

22 Q When did that begin?

23 A I was contacted by Mr. McCormack on -- in the
24 afternoon hours of September 14th.

25 Q That would have been Wednesday of this week?

1 A If you say so.

2 Q And what was the purpose of the contact?

3 A He contacted me and indicated that there was a
4 material witness warrant sworn out for that young lady
5 and asked that the Criminal Investigation Division make
6 efforts to locate her.

7 Q As a result of that what efforts have you made
8 to locate Ms. Cruz?

9 A We've done a number of things. The first thing
10 we did was, Detective Walborn, who is a United States
11 deputy marshal, in addition to him being a Dauphin
12 County detective, conducted an on-line intelligence
13 search on the young lady's name to see if he could come
14 up with any investigative leads that could have
15 concluded in prison in another location, any other
16 information relative to addresses, phone numbers and so
17 forth. He was able to locate a cellular phone number
18 which he turned over to Detective Heffner to further
19 investigate.

20 Also, we made contact with the Patriot News
21 Dauphin County Crime Stoppers and gave them a wanted
22 flyer on the young lady and asked them to possibly
23 publish that in the paper.

24 Q Did they do that?

25 A They did. That was published in the paper on

1 September 15, 2005.

2 I have a copy here of the news article that was
3 requested. It offered a reward if she was located and
4 so forth.

5 Also on the 14th, we entered her in the
6 national crime information center computer as a wanted
7 person so that if any police officers, law enforcement
8 officers nationwide would stop her and run her
9 information in the computer it would come back a hit
10 that in fact she was a wanted person here in Dauphin
11 County.

12 In addition to that, we had the Dauphin County
13 communication center send out a BOLO to all law
14 enforcement agents here in Dauphin County advising them
15 that she was a wanted person, that we were looking for
16 her.

17 Q A BOLO is a be-on-the-lookout?

18 A Yes.

19 Q Anything else?

20 A Yeah. What I did, I have an e-mail list of all
21 the chiefs of police in Dauphin County, and I sent a
22 flyer that was made by the Harrisburg Bureau of Police
23 and I mailed that flyer to every chief of police in
24 Dauphin County.

25 In addition to all the chiefs of police, I

1 tried to e-mail anyone else I thought would be perhaps
2 a source that they would come in contact with her, that
3 included representatives from the Dauphin County Adult
4 Probation and Parole. They have a lot of street
5 contact with people. The Capitol police, I mailed to
6 representatives there. I mailed to a representative
7 from the Pennsylvania State Police, Trooper Olwiler,
8 the intelligence officer for Troop H, hoping that
9 perhaps he could enter that into his intelligence data
10 base to come up with information relative to her.

11 THE COURT: You said mailed, you mean e-mail?

12 THE WITNESS: Yes, sir.

13 BY MR. BARKER:

14 Q Was there anything else?

15 A Yeah. We decided that we would canvass some of
16 the local motels to determine if we could locate her at
17 any of those or if anyone had any knowledge of her at
18 any of the hotels. We canvassed 28 hotel/motels. That
19 would have been done the evening of September 14th and
20 then I hit a couple of them on my way to work on the
21 15th. We did 28 of them.

22 Also, we left a flyer at each one of them
23 asking them to check the registry to see if she was
24 registered or if they did see her to please contact the
25 contact information on the flyer.

1 In addition then we went to five different car
2 rental agencies here in Dauphin County and did the same
3 thing, left a flyer at those locations and asked if
4 they recognized her, if, you know, she had rented a car
5 or anything recently.

6 The only other thing, we did receive one crime
7 stoppers tip that was received yesterday in the
8 afternoon hours and the information was that perhaps
9 the young lady was in the Lebanon, Pennsylvania area.
10 The location they gave they couldn't give an exact
11 location. They thought it was the 500 block of 11th
12 Street in Lebanon, Pennsylvania.

13 So what I did with that information, I called
14 an individual, Sergeant Brett Hopkins, who is assigned
15 to the Lebanon County drug task force. I called him
16 last evening and asked him if he was familiar with the
17 area of the 500 block of 11th Street in Lebanon. He
18 said that he was, that it was a drug area known to him.
19 And so I e-mailed him a copy of the flyer and gave him
20 the information and he has my contact information, if
21 he could ask around down there, and I contacted him as
22 a drug person because the caller had indicated that
23 they thought maybe she was staying with somebody at
24 someone's house down there on 11th Street who had
25 recently been arrested by the Lebanon authorities for

1 drugs. That's why I reached out to him. He said that
2 they make a lot of arrests there. It was kind of hard
3 for him to narrow that down. He said nonetheless he
4 would try and do something with that.

5 Q As a result of all of these efforts, have you
6 been able to locate Guillermina Cruz?

7 A Not so far.

8 Q And could you give me an approximation of how
9 many of your detectives have been involved in the
10 search?

11 A That would have been myself, Sergeant Garver,
12 Sergeant Maloney, Detective Walborn, Detective Wood,
13 that would have been it.

14 MR. BARKER: No other questions.

15 THE COURT: Cross.

16

17 CROSS EXAMINATION

18

19 BY MR. MULLER:

20 Q Detective Goshert, you weren't contacted by the
21 District Attorney until the afternoon of the 14th.

22 A Yes, that's the first.

23 Q That would have been on Wednesday?

24 A I don't know. I'm not good, you know -- if you
25 say so. He said so. I would agree with you.

1 Q You indicated Detective Walborn conducted an
2 on-line intelligence search, what does that really
3 consist of?

4 A Well, it's a -- the United States marshals have
5 a web site that anyone that's a deputy marshal or
6 United States marshal can utilize. It goes into
7 various search engines. It determines whether the
8 individual is in prison somewhere. It checks various
9 search engines. That's where they came up with the
10 cell phone number.

11 Q And that's the only thing they came up with?

12 A Yeah.

13 Q You indicated that was turned over to
14 Investigator Heffner, correct?

15 A That was indicated to me, yes, sir.

16 Q You didn't follow up on that particular aspect?

17 A Not on that particular one, no. I noticed when
18 I ran a Metro check there was a Harrisburg city address
19 and Detective Heffner indicated that he was going to
20 try to work with that address and with her family.

21 Q No responses on the NCIC or the BOLD?

22 A No.

23 Q The canvassing of local motels, are you talking
24 Dauphin County or more than Dauphin County?

25 A Well, Dauphin County, the only ones we did out

1 of Dauphin County were off of Exit 18. There's some
2 motels off of Exit 18 there.

3 Q Where is that?

4 A Off 83, that would be York County; actually
5 some in Cumberland, some of them in York County. There
6 was a number that were checked over there.

7 Q Do you know how many?

8 A I will look for you. Off the Exit 18 there was
9 the Rodeway Inn, Comfort Inn, the Fairfield Inn, Motel
10 6 and Travel Inn, five.

11 Q So the other 23 were in Dauphin County?

12 A Yes.

13 Q Nothing in Lebanon County?

14 A No.

15 Q And how do you locate motels? I don't know how
16 many there are. How do you go about that?

17 A Well, I tried to check motels that -- you know,
18 we didn't go to the Hilton or something like that. I
19 try to check motels that were more the economy, lower
20 end motels. If someone would be trying to avoid
21 authority they might stay in that type of choice.

22 Q Did you go through the yellow pages and then
23 start driving around?

24 A Basically, yeah. There's motels that are like
25 that, and there's a strip of them on Eisenhower

1 Boulevard. I went to them. There's some on Union
2 Deposit Road. There's a number of them on Route 22; a
3 number of them in the city, and that's the ones we
4 tried to do.

5 Q I assume the car rental agencies were in
6 Dauphin County?

7 A Yes.

8 Q No information got back to you about this tip
9 in Lebanon?

10 A Not so far.

11 Q You mentioned it was you and four other
12 detectives at CID involved in this?

13 A Correct.

14 Q Was yours the predominant role?

15 A Me personally?

16 Q Yes.

17 A No. I think we all pretty much shared it. My
18 predominant role, I had contact on the drug end down in
19 Lebanon. So I was able to call him. I believe the
20 city did some other efforts, Detective Heffner.

21 MR. MULLER: That's all I have.

22 MR. BARKER: No redirect, Your Honor.

23 THE COURT: Thank you, Lieutenant Goshert.

24 MR. BARKER: The Commonwealth calls Detective
25 Heffner.

1 DONALD HEFFNER,
2 having been sworn, was examined and testified as
3 follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. BARKER:

8 Q Please state your full name and spell your
9 last.

10 A My name is Detective Donald Heffner,
11 H-E-F-F-N-E-R.

12 Q How are you employed?

13 A Harrisburg Bureau of Police, Criminal
14 Investigation Division.

15 Q How long have you been a detective?

16 A Since 1997.

17 Q How long have you been a police officer?

18 A Since 1992.

19 Q Now, let's go back earlier in the week first.
20 Were you in contact with Guillermina Cruz on Monday?

21 A Yes.

22 Q Where was that?

23 A That was here at the courthouse. She attended
24 court. She had told us that she wasn't going to
25 testify on that day.

1 Q Now, as a result of her telling you that, did
2 you tell her she had to be here?

3 A I witnessed Sean McCormack -- later witnessed
4 Sean McCormack and later Officer Muldrow told her she
5 had to be here Tuesday.

6 Q You served her with a subpoena Saturday, not
7 last Saturday I think it was the first of September.

8 A That Saturday I personally served her at her
9 residence at 1407 South 15th Street, Apartment 103. I
10 talked to her at that time and she assured me she would
11 be here. I handed her the subpoena and she took it
12 with her hand and that was it.

13 Q In fact, on Monday at least she showed up?

14 A Yes. She was here Monday, and I also witnessed
15 the victim/witness coordinator, the person who calls
16 the witnesses, witness coordinator for the District
17 Attorney's office handed her another subpoena Monday
18 morning.

19 Q That would have been Kelly Anderson?

20 A Yes.

21 Q Have you seen her again this week?

22 A No. I talked to her boyfriend, Clifford, on
23 the 12th. I think it was around 5:30. He asked me if
24 Guillermina was going to jail Tuesday morning. I told
25 him no. I said she had an attorney. Just come to the

1 courtroom and follow her attorney's advice. That
2 didn't mean she was going to jail. Make sure she's
3 here Tuesday morning.

4 Q Now, as a result of her failure to appear, did
5 you make any efforts to locate her?

6 A Yes. On the 13th the honorable Judge Bratton
7 signed a bench warrant for her. I gave that
8 information to Captain Baldwin, commander of CID,
9 active chief since our chief is in Mississippi. With
10 twenty other officers, they put out a flyer. They put
11 my phone number down as a contact person. This was
12 distributed to all members of the Harrisburg Police
13 Department and also to Chief Goshert of Dauphin County
14 CID. I also gave a copy of the warrant to Officer
15 Muldrow. On the 14th of September 2005 Harrisburg
16 police entered the residence at 1407 South 15th Street,
17 Apartment 103.

18 Q Just to clarify, was that the prior residence
19 that you had discussed giving her the subpoena?

20 A Yes. That is the residence and has been the
21 residence for years.

22 MR. MULLER: What was the address?

23 THE WITNESS: 1407 South 15 Street, Apartment
24 103; at the time we arrested Clifford inside the
25 residence. Guillermina and her children were gone.

1 Clifford provided no information to the whereabouts of
2 Guillermina.

3 BY MR. BARKER:

4 Q What day was that the officer went in there?

5 A The morning of the 14th; also on the 14th we
6 checked another address on Allison Hill. It was a bad
7 address. We went to her grandmother's house at 1325
8 Vernon Street. She was not there. Also contacts were
9 made with Chief Wolf of northern Lebanon regional
10 police department. I believe to check 2024 Spruce
11 Street.

12 Q And why did you check that address?

13 A That's the residence of her mother Eugena
14 Camacho. She was close to her mother. In fact, her
15 mother was here with her on Monday.

16 MR. MULLER: The Spruce Street address is
17 Lebanon.

18 THE WITNESS: Yes.

19 BY MR. BARKER:

20 Q Was she located at that address?

21 A No.

22 Q I'm sorry. Go ahead.

23 A On the 14th I also contacted Lebanon City
24 police and spoke to the duty lieutenant and requested a
25 warrant service be conducted at her sister's residence

1 where we had arrested her boyfriend before at 62 North
2 12th Street in Lebanon.

3 Q Was that done to your knowledge?

4 A Yes, and that was in an abandon structure. She
5 had left it several weeks prior. Correction. Those
6 contacts were on the 13th.

7 Q We heard a little bit of testimony about a cell
8 phone number located and provided to you.

9 A Yes.

10 Q What did you do with that?

11 A The cell phone number I contacted it's a bad
12 cell phone number, no longer connected. There's no way
13 for us to get the records in an immediate turnaround.

14 Q When you say an immediate turnaround --

15 A It takes me a couple of weeks if they rush it
16 for me.

17 Q And you're referring to, they, you're talking
18 about the phone companies?

19 A Phone companies; that could go on for months.
20 Also on the 14th here at the courthouse I spoke to
21 Yesenia Cruz Camacho, sister of Guillermina. She
22 advised me that Guillermina dropped off the kids with
23 her and told her she was going to go to jail the next
24 day and left the residence.

25 Q Did she report knowing where her sister is?

1 A No. So I asked her to go home and try to
2 locate her sister. So I called her at her
3 grandmother's residence at 1325 Vernon and I spoke to
4 Yesenia Cruz again.

5 MR. MULLER: What date is this now?

6 THE WITNESS: The 14th.

7 BY MR. BARKER:

8 Q How do you spell Yesenia?

9 A Y-E-S-E-N-I-A.

10 Q And did she report getting any further
11 information locating her sister?

12 A No. In fact, when I told her the efforts that
13 have been being made to find her sister, that we were
14 publishing her picture and her information throughout
15 the area she became very upset with me. I then spoke
16 to her boyfriend again, Clifford.

17 MR. MULLER: Are we still on the 14th?

18 THE WITNESS: Yes. Clifford said that he had
19 no information for me for the whereabouts of his
20 girlfriend, Guillermina. Also throughout the 14th and
21 the 15th I received several phone calls providing
22 information where Guillermina lived.

23 THE COURT: From...

24 THE WITNESS: From an anonymous informant due
25 to the crime stoppers tip and the motels. The

1 information provided were old addresses. I received
2 the addresses on Vernon Street that already had been
3 checked. I received information about a mom living in
4 Lebanon. I received information that her sister,
5 Yesenia, worked at the Red Roof and also received the
6 fact that Guillermina lived at 1407 South 15th Street.
7 All this information had been previously checked by
8 police.

9 BY MR. BARKER:

10 Q Including the Red Roof?

11 A That was done by Chief Goshert.

12 Q Did you have any further information or any
13 other way to try to locate Guillermina Cruz?

14 A No.

15 MR. BARKER: No other questions, Your Honor.

16 THE COURT: Cross.

17

18 CROSS EXAMINATION

19

20 BY MR. MULLER:

21 Q Investigator Heffner, you've been dealing with
22 Ms. Cruz for a number of years now, correct?

23 A Since 2001.

24 Q You obviously had contact information over that
25 period of time, correct?

1 A Yes, and contact information is what I used for
2 Lebanon. That's how I was able to get the Lebanon
3 addresses, that's how I knew about 62 North 12th
4 Street. Her family moves a lot. So the contact this
5 month may not necessarily be the contact next month.

6 Q Did you have an opportunity to utilize that
7 cell phone number that they talked about?

8 A No. Like I said before, that would have --
9 would have taken weeks.

10 Q That's not the question. Did you ever use that
11 cell phone number? Did you ever call her on that
12 number?

13 A No.

14 Q That was an unfamiliar number to you?

15 A I wasn't familiar that she had a cell phone.

16 Q And when's the first time you went to make
17 contact with her after Monday?

18 A I never -- I guess the first time I was trying
19 to convince her --

20 Q Let me rephrase it. You indicated she was here
21 Monday.

22 A Yes.

23 Q And you had contact of some sort with her then?

24 A Yes.

25 Q A warrant was issued the afternoon on Tuesday?

1 A Around five; that was the last thing we did
2 here Tuesday.

3 Q Did you do anything Tuesday?

4 A Yes. That was when we were calling, would have
5 been the 13th, we were calling Lebanon, and that's when
6 the flyer was put out. That's when Chief Goshert was
7 involved in this with the flyers and then he started
8 working on it.

9 Q Did you go to any of the addresses that day?

10 A I was in contact with the family. I was
11 calling the family and speaking to them. We decided to
12 hit the residences first thing in the morning.

13 Q After when -- so it was the next day that you
14 went to where her boyfriend was?

15 A Right. Officers went to the boyfriend's house.

16 Q Did you talk to her boyfriend that day?

17 A Yes.

18 Q He didn't tell you anything?

19 A No.

20 Q Did he indicate to you the last time he saw
21 Ms. Cruz?

22 A He's saying she went to court on the 13th. She
23 was headed for court.

24 Q Tuesday morning?

25 A Yes.

1 Q Now, her sister spoke to you and told you that
2 Ms. Cruz had dropped her children off. We're talking
3 about four children, correct?

4 A Yes.

5 Q And that was on Wednesday, if I'm following
6 your chronology?

7 A Wednesday I talked to her sister, Yesenia, but
8 Guillermina had dropped off the children Tuesday.

9 Q Do you know when on Tuesday?

10 A No. Some time Tuesday; let me back up --
11 dropped them off Monday. She told her she was going to
12 be arrested Tuesday.

13 Q But she didn't tell anyone where she was going
14 to the best of your investigation?

15 A They had not told me where she was at. That's
16 the best way to answer that question.

17 MR. MULLER: That's all I have.

18 THE COURT: Any redirect?

19 MR. BARKER: One quick follow up.

20

21 REDIRECT EXAMINATION

22 BY MR. BARKER:

23 Q While making all efforts, you've also been in
24 court all day every day this week?

25 A I get out of here like you.

1 MR. BARKER: No further questions, Your Honor.

2 MR. MULLER: Nothing further.

3 MR. BARKER: The Commonwealth calls Sean
4 McCormack.

5

6 SEAN McCORMACK,
7 having been sworn, was examined and testified as
8 follows:

9

10 DIRECT EXAMINATION

11

12 BY MR. BARKER:

13 Q Please state your name and spell your last for
14 the record.

15 A Sean Maurice McCormack, M-c-C-O-R-M-A-C-K.

16 Q How are you employed?

17 A I'm a chief deputy District Attorney here in
18 Dauphin County.

19 Q You're the lead prosecutor on this case?

20 A That's correct.

21 Q Now, did you meet with Guillermina Cruz on
22 Monday?

23 A I met with Guillermina Cruz on Monday on three
24 occasions. The first time I saw Guillermina Cruz I
25 came down into the District Attorney's office. I was

1 informed that she was at the front counter. She was in
2 the morning before court started. I attempted to speak
3 with her there. She indicated to me she was only in
4 the District Attorney's office at that time to get a
5 copy of her subpoena because she forgot to bring her
6 subpoena to court. She appeared she didn't want to
7 speak with me. Kelly Anderson, the victim/witness
8 coordinator in our office, had the file and presented a
9 copy of her subpoena printed out for her and handed
10 that to her through the window of our front counter.

11 Q When did you speak to her again?

12 A I then spoke with her at the break, I believe,
13 of the lunch break sitting outside the courtroom. When
14 she was sitting outside the courtroom I had a brief
15 conversation with her which actually started outside
16 the courtroom and then moved downstairs to the lobby of
17 the courthouse by the front doors, by where the
18 fountains are.

19 I discussed with her at that time about her
20 testifying and trying to find out why she was
21 indicating she did not wish to testify. She was
22 indicating to me that she was afraid, that she was
23 scared, who was going to look out for her family, those
24 types of things she kept saying.

25 I would note also her mother was present at

1 that time saying similar things. The police aren't
2 going to do anything for them after this case is over;
3 who's going to watch out for them. I informed her that
4 it didn't matter whether she wanted to testify or not;
5 that she was going to have to testify; that I was
6 calling her as a witness; that she was subpoenaed and
7 that she was going to be here every day this week until
8 she got to the witness stand; and then whatever she
9 said she would have to say.

10 I also advised her that I was aware that Allen
11 Welch was appointed as her attorney and that he would
12 be back after lunch. She indicated that she was going
13 to pick up her children and then return at 2:30;
14 however, when we came back up to court after lunch
15 break -- I don't recall what time it was. But it was
16 before 2:30; she was sitting outside and that's when I
17 saw her for the third time that day, and when I saw her
18 sitting out there I walked around the courthouse to see
19 if I could find Allen Welch. I found him in one of the
20 other courtrooms and I brought him over to her.

21 Q And do you know why Allen Welch was appointed
22 to represent her?

23 A He was appointed because last Thursday she --
24 after receiving a phone call from our office asking her
25 to come in and speak with me to prepare for trial, she

1 refused to do so. She then went down to the Public
2 Defender's office. It's my understanding she spoke to
3 Paul Muller from the Public Defender's office. Not
4 long after that he called me and we had a meeting with
5 Judge Bratton later on that day.

6 Q Now, you indicated there was a third
7 conversation and that was...

8 A The third conversation was really just hooking
9 her up with her attorney.

10 Q Did you actually see them together then?

11 A I saw them talking together.

12 Q Did you see Guillermina Cruz again that day?

13 A I did not. We had suggested when we were at
14 sidebar speaking with the Judge -- in fact, the Judge
15 suggested that perhaps Allen Welch, Guillermina Cruz
16 and myself go meet to discuss the options and her fear
17 of testifying and those sorts of things. I saw Allen
18 Welch later that evening. He indicated that it wasn't
19 going to happen that night. That would have been
20 Monday night. Guillermina didn't fully trust him and
21 she told him she wanted a second opinion.

22 Q Now, we heard a little bit of testimony about
23 Guillermina telling her sister that she was going to
24 jail. Do you know anything about that?

25 A Not personally other than what Detective

1 Heffner told me.

2 Q And did she appear on Tuesday?

3 A I did not see her on Tuesday in the morning. I
4 then started the process of having a material witness
5 warrant drawn up. Over the lunch hour I completed that
6 by writing out the affidavit and having that notarized
7 and at the break, at the end of the court day, Judge
8 Bratton issued the warrant for her arrest. I then
9 provided that to -- I believe Officer Muldrow was given
10 a copy of that. I think he was actually the one that
11 went and filed that and placed it into whatever process
12 it began.

13 Q Once again so we're clear about this, during
14 the day that they were preparing the material witness
15 warrant you were in court all day?

16 A I was in court also.

17 Q Including with Judge Bratton who issued the
18 warrant?

19 A Yes.

20 MR. BARKER: Nothing further.

21 THE COURT: Cross-examine.
22
23
24
25

CROSS EXAMINATION

BY MR. MULLER:

Q You met -- she's in the hallway, I guess, Monday, right?

A Yes. She was right outside the door here.

Q Going back to last week and the conference you had and I had with the Judge on Thursday, you would agree with me that that was over her request for counsel because of her concerns about testifying?

A Yeah, that's what that was about. I did not -- she kept saying every time she talked to our office that she was going to be here on Monday. You know I'm going to be there. I'm going to say what I'm going to say. There was a discussion whether she needed counsel for when she was on the witness stand not necessarily that she wasn't going to appear.

Q And the last time she was back on Monday was after lunch; is that accurate?

A I saw her in the hallway sitting not on the same bench, in the area just generally outside this courtroom sitting there with her mother.

Q That was prior to the afternoon session?

A That was prior to the afternoon session, yes.

Q Did you ever have a meeting with Mr. Welch and

1 Ms. Cruz --

2 A I never had a meeting with Mr. Welch and
3 Ms. Cruz. He indicated that she had left that evening,
4 that she had gone home.

5 Q -- at the end of that day?

6 A At the end of that day, and then I did see him
7 the next morning and she had not contacted him at all
8 nor had he seen her. I'm talking about Tuesday night.

9 Q At that point she was requesting someone else?

10 A I think what -- you're asking when he told me
11 about that she wanted a second opinion?

12 Q I guess it would have come from him?

13 A Yes.

14 MR. MULLER: Nothing further.

15 MR. BARKER: No redirect, Your Honor.

16 THE COURT: Thank you, Mr. McCormack.

17 MR. BARKER: Your Honor, that would be all we
18 have on this aspect of the hearing, the unavailability
19 of the witness.

20 THE COURT: Any other?

21 MR. MULLER: We have nothing to present.

22 THE COURT: All right. Does someone want to
23 summarize positions here? I assume we're all agreeing
24 it's dealing with Rules of Evidence 804.

25 MR. BARKER: Yes, Your Honor.

1 THE COURT: Is unavailability a true issue
2 here, Mr. Muller?

3 MR. MULLER: It does not appear to be.

4 THE COURT: I find the witness to be
5 unavailable within the meaning of Pennsylvania Rule of
6 Evidence 804.

7 Now, what is it that the Commonwealth then is
8 proposing to use as evidence under that rule?

9 MR. BARKER: Your Honor, we are proffering the
10 preliminary hearing testimony of Guillermina Cruz from
11 the hearing that was conducted on March 5 of 2002 out
12 at Dauphin County Prison. Mr. McCormack appeared for
13 the Commonwealth and Monty Batson then of the Public
14 Defender's office appeared for the Defendant.

15 THE COURT: Should we make a copy of that as an
16 exhibit in these proceedings?

17 MR. BARKER: That would be a good idea, and I
18 made a copy for that purpose.

19 THE COURT: The preliminary hearing transcript
20 from March 5, 2002 has been marked as Commonwealth
21 Exhibit 54.

22 MR. BARKER: The Commonwealth intends to
23 proceed by having Mr. McCormack ask the questions as he
24 did at that time and then have Jason McMurphy of our
25 office in the role of Guillermina Cruz and answer the

1 questions as they are in the transcript.

2 MR. MULLER: Can we approach on this issue?

3 THE COURT: Do we need to do that? There's no
4 jury present. If you wish we can.

5 MR. MULLER: Our witness is Mr. Batson who has
6 another hearing. I'm just wondering if there's an
7 expedient way to do that.

8 MR. BARKER: Your Honor, I'm sorry. When I
9 said we're proffering that I thought Your Honor was
10 asking whether we intend to do it in front of the jury.

11 MR. MULLER: I thought you were talking
12 about --

13 THE COURT: No, no. We're getting there, but
14 that's not the way I understood it either. Mr. Barker,
15 is the Commonwealth proffering the inclusion of the
16 entire transcript of the preliminary hearing? I'm not
17 familiar with the transcript. Does it contain
18 testimony of anyone else or are there matters not to be
19 included? It is only her testimony?

20 MR. BARKER: It would only be Guillermina
21 Cruz's testimony. I guess we would leave it to the
22 Defense. What happened was, Mr. Batson called Ms. Cruz
23 during the Defense's case and I believe we would be
24 proffering our own testimony when we called Ms. Cruz.
25 I guess I should defer to Mr. McCormack.

1 MR. MULLER: Your Honor, if I may, there were
2 only two witnesses at the hearing, Ms. Cruz and
3 Investigator Heffner. I think we're talking about
4 Ms. Cruz's testimony.

5 MR. McCORMACK: Logistically I envision if
6 Defense chose to do so could read their questions to
7 the same witness being on the stand, Mr. McMurry.

8 THE COURT: I'm confused even further now by
9 the statement she was called as a Defense witness at
10 the preliminary hearing.

11 MR. BARKER: Yes, Your Honor.

12 MR. MULLER: It was brief. I believe it was a
13 page or two at the end of the hearing related to one
14 question.

15 THE COURT: She had already testified as a
16 Commonwealth witness.

17 MR. McCORMACK: Yes.

18 THE COURT: I was confused. I thought you were
19 saying actually the cross examination then by the
20 Commonwealth that was being proposed. She was called
21 as a Commonwealth witness. 'That's what you're
22 proposing to be read into the record.

23 MR. BARKER: We have no objection if the
24 Defense wanted to read that small portion for which
25 they called her at the preliminary hearing.

1 THE COURT: All right. There are numerous
2 instances of argument. We would propose to redact
3 objections that were raised, that kind of thing.

4 MR. MULLER: There were references to a
5 conflict issue which obviously wouldn't come in in
6 front of a jury.

7 THE COURT: I understand. I understand.
8 What's your objection?

9 MR. MULLER: I don't think the Defense, the
10 Defendant had a full and fair opportunity for cross
11 examination at that point because we had not been
12 provided with all relevant material and impeachment
13 materials including and probably not limited to her
14 statement to the police of February 19 of 2001; her
15 grand jury testimony of March 28, 2001; the statements
16 of numerous other witnesses who contradict her
17 testimony and phone calls she had with Investigator
18 Heffner prior to that hearing date and knowledge of --
19 two things involving Anthony Knight, aka, Black, that
20 he had taken her the day after the incident and
21 sequestered her for about a week before; and her
22 statement of December 28, 1996, and in this period of
23 time after 1996 up to and including the preliminary
24 hearing on March 5, 2002, Anthony Knight had sent her
25 letters and made numerous threats to her about her

1 testifying.

2 THE COURT: You're saying those facts were not
3 disclosed.

4 MR. MULLER: No, no, they were not. What I'm
5 able to determine, Your Honor, at that March 5, 2002
6 preliminary hearing where Mr. Batson from my office
7 represented Mr. Love, he was presented by Mr. Love's
8 family, I guess, with a preliminary hearing transcript
9 from the March 18, 1997 preliminary hearing in this
10 matter where Mr. --

11 THE COURT: What was the date again?

12 MR. MULLER: March 18, 1997 -- where Mr. Love
13 was represented by Attorney Jerry Russo and I believe
14 they may have also had the January 17, 1997 preliminary
15 hearing transcript where Mr. Love was represented by
16 Attorney James Rowland, and there's some indication
17 Mr. Batson had a copy of the December 28, 1996
18 statement to the police by Ms. Cruz, and it appears
19 that was so because that was made part of the record at
20 the preliminary hearing on March 18, 1997 when
21 Mr. Russo was representing Mr. Love.

22 I would also add that at that March 5, 2002
23 preliminary hearing Mr. Batson was prevented from
24 asking Ms. Cruz about anything that happened after she
25 left the house. That was objected to by the

1 Commonwealth and he was never able to get into that
2 issue as to what happened after that, and that's
3 significant because as the Commonwealth has stated in
4 their opening they are trying to show that these times
5 don't make sense. Obviously if we had any information
6 from her and what appears from her statements later on,
7 what we got later on, she talks about Mr. Love coming
8 up to her later that day and telling her to make up
9 this story. She talks about that happening at a
10 certain time. There was no information about that back
11 at the preliminary hearing. And in regards --

12 THE COURT: You have me at a bit of a
13 disadvantage. Was that material discussed during the
14 course of the preliminary hearing? Is that part of the
15 testimony that's being proffered by the Commonwealth?

16 MR. MULLER: No. I'm saying -- I guess I'm
17 trying to present what we're saying was not available.

18 THE COURT: A written statement that she had
19 given that contained information about post presence at
20 the scene of the crime.

21 MR. MULLER: After the scene of the crime, what
22 she did after that and what she allegedly did with
23 Mr. Love after that. Obviously in regards to the grand
24 jury testimony I know the rules about what we're
25 allowed to have and not allowed to have until the

1 witness actually testifies.

2 THE COURT: Here at the trial.

3 MR. MULLER: Correct, and ultimately we were
4 presented with some of her grand jury testimony that
5 the Commonwealth determined we were allowed to have.
6 That was at a much later date; even that wasn't
7 available back then, and it had, in fact, the Defense
8 had been specifically precluded that by court order
9 from Judge Clark. So that was unavailable to the
10 Defense back in 2002 at the preliminary hearing.

11 THE COURT: As a result of that you're saying
12 that the Defendant did not have adequate opportunity to
13 cross-examine Ms. Cruz at the March 2002 preliminary
14 hearing?

15 MR. MULLER: Correct.

16 THE COURT: All right.

17 MR. MULLER: As they would today if she were
18 here.

19 THE COURT: Mr. Barker.

20 MR. BARKER: The purpose of cross examination
21 is to impeach. While there's a lot of materials they
22 need to be impeachment materials, to simply say we
23 didn't have something didn't suffice. For example, the
24 two statements that were given in 2001 to Investigator
25 Heffner are consistent with the preliminary hearing

1 testimony, therefore, whether or not they had those
2 would be irrelevant to this issue.

3 THE COURT: How do we know that without making
4 it part of the record?

5 MR. BARKER: I would be happy to do that, Your
6 Honor. With respect to the discussions with Black,
7 which would have been Ms. Cruz's boyfriend at the time,
8 I don't know how you impeach a witness by saying you
9 were threatened not to say what you're saying now.
10 That corroborates the witness.

11 MR. MULLER: As to someone else not the
12 Defendant.

13 MR. BARKER: I'm not sure I understand that.

14 THE COURT: Well, me neither exactly but...

15 MR. BARKER: I would also note we were told
16 that the Public Defender's didn't have any of this
17 information. First of all, they represented
18 Guillermina Cruz when she was adjudicated delinquent
19 for fleeing after the crime apparently at Black's
20 insistence. So for them to say they didn't know about
21 any of that back then is --

22 MR. MULLER: Well, that's assuming that we
23 violated professional rules of conduct and the Rules of
24 Evidence and someone in my office went and obtained
25 that evidence from a file which we can't do. That's

1 why we conflict something out.

2 MR. BARKER: Which assumes you violated rules
3 of ethics by your current client by not doing that.
4 That was the problem.

5 MR. MULLER: No. It would be if that was
6 available to another attorney and that wouldn't have
7 been available to another attorney representing
8 Mr. Love.

9 THE COURT: We've already trampled this field
10 rather thoroughly I think.

11 MR. MULLER: I object to the continued
12 insinuation of a violation of conduct. That's been up
13 and down in the court enough.

14 THE COURT: The question ultimately is then --

15 MR. BARKER: They also did nothing to subpoena
16 juvenile probation records. I believe I have to go
17 back through this transcript in detail. I believe
18 Guillermina Cruz was even cross-examined on her
19 adjudication. I have to go through this a little bit.

20 MR. MULLER: It was objected to.

21 MR. BARKER: To say that they didn't know about
22 that again is inconsistent with the transcript even if
23 it was objected to and not delved into. The cross
24 examiner would plainly -- knew about it, knew the
25 question.

1 MR. MULLER: The cross examiner, do you have a
2 juvenile record? Were you arrested for any -- logical
3 question. It was objected to by the Commonwealth.
4 Credibility is not an issue at the preliminary hearing,
5 which was mentioned numerous times by Mr. McCormack at
6 the 2002 preliminary hearing.

7 MR. BARKER: Once again I'm still not hearing
8 how it impeaches Guillermina Cruz. The fact she
9 continued to say what she's saying, and again the new
10 statements were consistent with that, as to these other
11 witnesses.

12 THE COURT: Are you -- you're then saying to me
13 that at the time of this hearing there were no prior
14 inconsistent statements by this witness that would have
15 aided in the cross examination or impeachment of this
16 witness at the time?

17 MR. BARKER: Almost. Her December 20, 1996
18 statement was inconsistent. The Defense had that.
19 That's the one.

20 THE COURT: That's what I meant. There were
21 none that are not already disclosed.

22 MR. BARKER: That's correct.

23 MR. MULLER: I would disagree with that. As an
24 example her grand jury testimony on March 28, 2001 at
25 least the portions we've been allowed access to, she

1 denied seeing Kazar at the apartment that night.

2 MR. BARKER: Which is consistent with her
3 statement back in 1996 that three people in the house
4 at the time of the murder were herself, Iris and
5 Tyshaunt Love.

6 MR. MULLER: Which is inconsistent with her
7 testimony at the preliminary hearing on March 5, 2002.

8 MR. BARKER: Which information was already
9 available to the cross examiner.

10 THE COURT: In the form of a written statement.

11 MR. BARKER: Yes.

12 MR. MULLER: Which written statement are we
13 talking about?

14 MR. BARKER: The January 28, 1996 statement --
15 December, I'm sorry, December 28th.

16 THE COURT: I need to read the transcript. I
17 need to see the statements that were available, what
18 information was available and what information was
19 available to the prosecution but not available to the
20 cross examiner.

21 MR. BARKER: I agree, Your Honor. I believe as
22 far as the facts go we're in agreement. It's what you
23 do with them.

24 THE COURT: Why don't we mark those statements
25 that were available. Identify them for the record

1 similarly marking those that were available to the
2 Commonwealth but not to Defense counsel at the time and
3 identify those as well for the record so that I can
4 then perhaps over the lunch hour take a look at them
5 and make my ruling.

6 MR. BARKER: Your Honor, for these purposes if
7 acceptable we'll write at the top and we'll show them
8 to you which one is available and not available.

9 MR. MULLER: That's fine.

10 THE COURT: I assume we're going to continue
11 the numbering system.

12 MR. MULLER: If I could bring up another
13 collateral issue, as you've seen the number of
14 witnesses, after they presented the witness we're
15 presented with full grand jury testimony to
16 cross-examine that witness one at a time. I'm not sure
17 how we would even be able to do that. Obviously
18 Ms. Cruz has testified before a grand jury. Obviously
19 after they put her up they would have to present us
20 with that after direct. In this case they are
21 suggesting reading in her preliminary hearing testimony
22 as her direct then we would be given her full grand
23 jury testimony. I don't know what it contains. I
24 think the previous ones have contained quite a bit of
25 cross examining questioning. I don't know how that

1 would work in this case, now to get her full grand jury
2 testimony after they want to put her in in this manner
3 and not be able to cross-examine the witness on her
4 grand jury testimony.

5 THE COURT: Mr. Barker.

6 MR. BARKER: I think again they have to show
7 impeachment material just to say that --

8 THE COURT: No, no. I don't want to step on
9 your toes here, Mr. Muller. I think what he's saying,
10 assuming we were to say okay she's unavailable, as I
11 already ruled, and this testimony was back in 2002
12 offered at the time when there was adequate opportunity
13 to cross-examine her, if, if assuming your innuendo
14 that's the ruling and then you read this testimony,
15 does that not in essence mean that the Commonwealth is
16 proffering that testimony as if the witness were here
17 and in essence saying by implication otherwise that
18 this is what the witness would have testified to if she
19 were here, therefore, it's the testimony today then you
20 would be obligated to provide full grand jury testimony
21 of this witness. Now what?

22 MR. BARKER: As far as the Defense cross
23 examining this witness --

24 THE COURT: Today.

25 MR. BARKER: -- today, the opportunity was back

1 at the preliminary hearing and they had available to
2 them all of the tools of impeachment that were
3 available then.

4 MR. MULLER: Collateral issue.

5 MR. BARKER: And in effect they don't have a
6 right to cross-examine her today. If they wish to
7 rebut her testimony that's a separate matter. But --

8 THE COURT: Well, could I -- how would they
9 effectively do that? That's what Mr. Muller is asking.

10 MR. BARKER: That's up to them, Your Honor.
11 They had their opportunity for confrontation and cross
12 examination at the preliminary hearing. If they choose
13 to they can always introduce the testimony through the
14 transcript and I believe Mr. McCormack is indicating to
15 me we would not object to that.

16 THE COURT: Presenting the testimony from the
17 grand jury.

18 MR. BARKER: That's correct.

19 MR. MULLER: How do I question her on that
20 though? For instance, you saw Candace Mills, 27 pages
21 of grand jury testimony from her. That in a lot of
22 ways is a gold mine for cross examination as to certain
23 things and get her to explain them in more detail and
24 going on with that. The logic is circular -- full fair
25 opportunity at the prelim three years ago to question

1 this witness but we didn't have grand jury testimony
2 from this witness, but even that being the case we had
3 a full and fair opportunity that we won't have.

4 THE COURT: In the ordinary course you would
5 not have grand jury testimony available to you at the
6 preliminary hearing either.

7 MR. MULLER: I understand that. That's a risk
8 they take when they proceed through a grand jury
9 indictment and you get to a point like this. I mean,
10 we're talking about this Defendant's right here.

11 THE COURT: Why would you be -- why would you
12 object to reading those portions of the grand jury
13 testimony of this witness and pointing out that it is
14 inconsistent with what was just presented as the
15 testimony she had given on March 2, 2001 -- March 5,
16 2002?

17 MR. MULLER: I wouldn't object to having the
18 portions of the grand jury testimony come in just as I
19 would be asking her on the stand. The problem is,
20 where do I go from there? I can't follow up on those
21 issues that are raised by her grand jury testimony as I
22 would be able to do with Candace Miller and the other
23 witness. I'm sorry. I'm getting names confused. But
24 how do I follow up on that? How is that the equivalent
25 of full and fair?

1 THE COURT: You want me to say that's
2 equivalent of her being here, it is not. The rule
3 itself that I'm dealing with, the Rule of Evidence that
4 says the transcripts of prior proceedings may be read
5 if the witness is unavailable and if at the time of
6 that testimony there was, rule said, an adequate
7 opportunity for cross examination. So as of March 5,
8 2002 was there an adequate opportunity to cross-examine
9 her. As you yourself pointed out, Mr. Muller, the
10 question you're now raising is collateral. If I make
11 that determination and the testimony is read, then
12 what? Well, I don't think that we are required to
13 somehow equate the reading of the testimony with the
14 presence of the witness. Her unavailability leaves us
15 all with a less than truly satisfactory result. That's
16 what the Rule of Evidence we're dealing with provides.

17 MR. MULLER: My concern, I guess, Your Honor --

18 THE COURT: An opportunity for adequate cross
19 examination, however, as to the admissibility of this
20 transcript is not what's adequate today. It's what was
21 adequate at the time. That's the issue.

22 MR. MULLER: I guess what I'm saying is, if it
23 weren't protected grand jury testimony, if it was
24 another statement given to police or given to the
25 Commonwealth, we would have been arguing we were

1 entitled to that to have full and fair cross
2 examination back in 2002. Now we're in this
3 predicament because the law --

4 THE COURT: The collateral issue you're back to
5 saying it wasn't adequate at the time.

6 MR. MULLER: I think it's both. It's arising
7 now because we can't have a witness on the stand. I
8 think it goes back to then because they chose to have
9 secret testimony that had it been taken in any other
10 form, the argument today, they didn't give it to us
11 back then, that was, whatever might have been in there.
12 I don't know. But it could have been impeachment
13 evidence. But we don't know that. We don't even know
14 that today. So fine, the rule says adequate
15 opportunity to cross examination but it doesn't address
16 the issue of secret testimony.

17 THE COURT: So I should see the grand jury
18 testimony as well.

19 MR. BARKER: I agree. Once again I made a copy
20 for that purpose.

21 THE COURT: Mark it.

22 MR. MULLER: Do I also get a copy of that?

23 THE COURT: Is there any reason not to?

24 MR. McCORMACK: The only problem is the
25 difficulty of grand jury testimony the rule does not

1 provide for that. I'm not seeking to prosecute
2 anybody.

3 MR. MULLER: Yet.

4 MR. McCORMACK: For that I don't want to be
5 prosecuted for breaking the rule. That's the
6 difficulty with these rules.

7 THE COURT: The proffering of this witness's
8 testimony right now I think within the spirit of the
9 rule you can provide it to him without violation.

10 MR. BARKER: Fair reading of the rule,
11 Guillermina Cruz has already testified.

12 THE COURT: I think that's true. At this
13 point -- how are you marking these so my records are
14 correct?

15 MR. BARKER: Your Honor, I have marked the
16 statement of December 20, 1996 as Commonwealth Exhibit
17 55.

18 THE COURT: That was the one that was available
19 to the Defense at the time of her testimony.

20 MR. BARKER: That's correct. The statement of
21 December 28, 1996, Commonwealth Exhibit 56, and that
22 also was available; Commonwealth Exhibit 57 is a
23 statement of February 19 of 2001. That was not
24 available.

25 THE COURT: To the Defense.

1 MR. BARKER: Correct. Commonwealth Exhibit 58
2 would be a statement of March 24, 2001. That also was
3 not available to the Defense.

4 MR. MULLER: What was the date again?

5 MR. BARKER: March 24, 2001.

6 MR. MULLER: If I could just review this for a
7 minute. You can continue.

8 MR. BARKER: Commonwealth Exhibit 59 would be
9 the grand jury transcript. That's dated March 28,
10 2001. That was not available.

11 THE COURT: Any other statements,
12 correspondence or the like, anybody, that would have
13 been a prior statement of this witness that was in the
14 Commonwealth's hands that was not available to the
15 Defendant at that time? Mr. Barker.

16 MR. BARKER: Not that I'm aware of unless the
17 Defense can point me in a direction, Your Honor.

18 THE COURT: Any other materials that was made
19 available to the Defendant that I have not heard about
20 as to Ms. Cruz's prior statement?

21 MR. MULLER: Just for clarification, I don't
22 think it's limited to statements of testimony. Are
23 they talking about impeachment of evidence? And I
24 guess what I'm saying, formal statements -- I mean,
25 statements made to anyone, to the Commonwealth, other

1 officers or anything like that that were reduced to a
2 formal statement would also be considered as to whether
3 it was available or unavailable for full and fair cross
4 examination.

5 THE COURT: Are you suggesting I need to hear
6 testimony as to what other reports may have been
7 available to the Commonwealth but not made available to
8 the Defendant at the time of the preliminary hearing?

9 MR. MULLER: As of that date, yes. The Court's
10 indulgence. The thing that occurs to me, Your Honor,
11 obviously you haven't heard it, but Investigator
12 Heffner reports there were phone calls between Ms. Cruz
13 and Investigator Heffner and statements that were
14 recorded from -- I guess she was leaving messages for
15 Investigator Heffner.

16 MR. BARKER: Your Honor, I didn't hear how that
17 would be impeachment evidence.

18 MR. MULLER: The Court's indulgence. Your
19 Honor, there's a discrepancy I want to clarify.

20 THE COURT: All I want at this point is I need
21 to know, Mr. Muller, from the Defense what is it that
22 you believe existed at the time of the preliminary
23 hearing in March of 2002 that was not disclosed to you
24 and which constitutes valid impeachment and
25 inconsistent statements or otherwise impeachment

1 issues? The point being that it's not a question of is
2 there other material. You have an obligation I believe
3 to point out how it would have, the unavailability at
4 the time, impeded inadequate cross examination of the
5 witness.

6 MR. BARKER: Your Honor, before you leave just
7 to correct something. Mr. Muller pointed out
8 Commonwealth Exhibit 57 dated February 19, 2001 is a
9 typo. That should have been 2002. Again that was not
10 available and I had indicated that previously.

11 THE COURT: Not made available to the Defendant
12 at the time.

13 Mr. Muller, do you have anything at this point
14 to bring to my attention to supplement? I'll review
15 them over the lunch hour. Shortly thereafter we'll
16 take up testimony until I consider this matter.

17 (A brief recess is taken from 10:07 a.m. to
18 10:23 a.m.)

19 THE COURT: Put on the record what you think,
20 on behalf of the Defendant, believed is material or
21 information that should have been made available to
22 you, to the Defense, but were not. If they are not
23 already part of an exhibit, mark copies of them and get
24 them on the record.

25 MR. MULLER: The grand jury testimony is not

1 part of the exhibit.

2 THE COURT: Yes, it is.

3 MR. MULLER: If you're talking about grand jury
4 testimony dated March 28, 2001, I believe that's what
5 it is. In addition to that, Your Honor, referring to
6 the statement of March 24, 2001, she's asked why she
7 gave two different versions of her story, and in one
8 then she says essentially back then they were telling
9 me to tell just what they wanted to hear so we could be
10 out of town quicker; may or may not consider that
11 impeachment. I would think that was -- would be
12 important to ask if someone was telling me what to say.
13 In addition, as mentioned before, the Defense is being
14 prevented from asking her, Ms. Cruz, about what they
15 did after they left the victim's apartment because her
16 statements indicate she saw him later at certain places
17 or place and the time frame becomes important in there
18 as to who was doing what when.

19 Her December 20, 1996 statement, her first
20 statement, which obviously is entirely contradictory of
21 everything else and her grand jury --

22 THE COURT: Wait a minute, that statement I was
23 just told was made available to the Defense prior to
24 the time of the preliminary hearing, December 20, 1996.

25 MR. BARKER: Yes. It was given over in

1 discovery in the first case for one thing.

2 MR. MULLER: I don't know, Your Honor. That's
3 why I had Mr. Batson here to testify earlier to see
4 about that.

5 THE COURT: I thought someone told me the
6 transcript actually had reference to that statement.

7 MR. BARKER: That's the 28th.

8 THE COURT: Will I need to have testimony on
9 that issue then as to whether or not that statement of
10 December 20, 1996 was or was not turned over?

11 MR. BARKER: I suppose we would need
12 Mr. Rowland. Probably he represented him at the time.

13 MR. MULLER: Jerry Russo really.

14 MR. McCORMACK: I believe at the time of
15 discovery it was Mr. Rowland. Attorney Rowland had the
16 case. Attorney Russo had the case by the time of the
17 third preliminary hearing. Attorney Rowland had the
18 case again. He had it at the time it was dismissed.

19 THE COURT: If the parties do not agree as to
20 what statements were or were not available to the
21 Defense at the time, then I guess we need to have a
22 hearing on that issue. When can we do that?

23 MR. BARKER: I'll call Mr. McCormack.

24 MR. McCORMACK: The day I provided the
25 discovery during the first prosecution.

1 MR. MULLER: Mr. Batson had a hearing to go to
2 so he could not stay.

3 MR. BARKER: I would reference page 46 of the
4 preliminary hearing transcript from March 5, 2002.
5 There's a reference of the December 20, 1996 statement
6 and that's at line 18.

7 MR. MULLER: It's not a reference to the
8 statement. It's a reference to December 20th.

9 MR. BARKER: I agree, Your Honor. Your Honor,
10 if we need to have a hearing, I suppose I have to put
11 Mr. McCormack on the stand to say that he provided
12 discovery. In fact, he's still under oath. I can do
13 it from here if you like.

14 THE COURT: He doesn't need to refer to any of
15 his files to see if he has documentation to say that
16 was done and to whom it was provided.

17 MR. McCORMACK: I don't have the exact dates.
18 I know for a fact I turned over her statements to the
19 attorney in the first case.

20 THE COURT: To which attorney?

21 MR. McCORMACK: Attorney Rowland.

22 THE COURT: And are you testifying here today
23 then, Mr. McCormack, that the statement which was been
24 marked as Commonwealth Exhibit 55, that being the
25 statement of Guillermina Cruz of December 20, 1996, was

1 turned over to Mr. Rowland representing this Defendant
2 and at some time prior to the preliminary hearing of
3 March 5, 2002?

4 MR. McCORMACK: Yes. I would also note --

5 THE COURT: Do you know when that would have
6 approximately been?

7 MR. McCORMACK: I know it was some time after
8 July of 1997 because I did have a letter from
9 Mr. Rowland indicating that he had not yet received his
10 discovery from me at that point in time, and it was
11 some point after then that I provided them discovery.

12 THE COURT: Well, March 4, 2002, the day before
13 the hearing or...

14 MR. MULLER: Mr. Rowland was done in March of
15 1998 when they originally dismissed the case.

16 THE COURT: Some time in that time frame.

17 MR. McCORMACK: Yes, in that time frame.

18 THE COURT: In July of '97, in March of '98.

19 MR. McCORMACK: Yes, and she also in her
20 preliminary hearing transcript, very first preliminary
21 hearing, essentially reverse -- reverted back. Her
22 testimony was essentially reverting back to the
23 original statement. She told the police that she had
24 never gone over to the house. That's why --

25 THE COURT: You're referring to a transcript of

1 a hearing not part of my record.

2 MR. BARKER: Not that one.

3 THE COURT: I did not know it was an issue. Is
4 it an issue?

5 MR. BARKER: Apparently it is. I can go make a
6 copy of this and provide it to the Court.

7 MR. McCORMACK: That's essentially what she
8 does at the preliminary hearing and the Commonwealth
9 asked for a continuance.

10 THE COURT: I'm sorry. Which preliminary
11 hearing?

12 MR. McCORMACK: The very first, January 17,
13 1997 at District Justice Zozos. As she began
14 testifying it became evident to myself and Dianna
15 Woodside, the lead prosecutor at that time --

16 MR. BARKER: Your Honor, I'm also looking at
17 the notes of testimony of the preliminary hearing of
18 March 18, 1997 in which Mr. Russo used that statement
19 in cross examination.

20 THE COURT: Used which statement?

21 MR. BARKER: The December 20, 1996 statement.

22 MR. McCORMACK: Would you agree Mr. Russo had
23 that statement in '97?

24 THE COURT: It was available to the Defense.

25 MR. MULLER: To one of the prior defense

1 attorneys in '97.

2 THE COURT: So you still want to call
3 Mr. Batson?

4 MR. MULLER: Only if we have to make an issue
5 out of whether the defense attorney in 2002 had that.

6 THE COURT: I'm asking, is that an issue?

7 MR. MULLER: I think it's a legal issue then as
8 to whether if the Defendant's prior attorney had it.
9 That then imputed to the subsequent attorney doing a
10 preliminary hearing years later.

11 MR. BARKER: Same attorney who received
12 documents apparently had been given them previously
13 such as the December 28, 1996 statement.

14 THE COURT: Which somehow made it to
15 Mr. Batson's hands somehow. I suppose we have to ask
16 Mr. Batson how he got some and not all.

17 MR. BARKER: I believe the Defendant's father
18 brought those documents and provided them to
19 Mr. Batson. This Defendant had access to all of those
20 documents.

21 MR. MULLER: I wouldn't agree to the assertion
22 it was all the documents.

23 MR. BARKER: Which is in his attorney's file.

24 MR. MULLER: I don't want to get into hearsay
25 of Mr. Batson but essentially if he testified, I think

1 he would have testified that he had the preliminary
2 hearing transcript from the two prior hearings and he
3 had this statement to the police from December 28th of
4 '96. I think that's clear from the preliminary hearing
5 record.

6 THE COURT: That he used those.

7 MR. MULLER: There was no use of a statement of
8 December 20th.

9 THE COURT: He's going to say he did not have
10 it.

11 MR. MULLER: He did not have it.

12 THE COURT: That's not what I -- is he going to
13 say I did not have it?

14 MR. MULLER: That was my understanding.

15 MR. BARKER: Our response would be, is he going
16 to say they were not available?

17 THE COURT: That's right. That's the issue.

18 MR. MULLER: I understand that, Your Honor.

19 THE COURT: When is he going to be here, if we
20 have to have a hearing on this point if you're not
21 willing to concede that they were available to the
22 Defendant?

23 MR. MULLER: We could probably have him here
24 after lunch.

25 THE COURT: Let's do it at 1:30 then, hear that

1 little bit of testimony, I guess, for what it's worth.

2 MR. MULLER: If I could continue then. The
3 other issue, whatever is her grand jury testimony we've
4 been presented with it, I haven't read through it.
5 It's 82 pages. I don't know if I could say there's
6 impeachment material in there or not at this point.

7 THE COURT: I understand that. I was asking
8 what other stuff you believe there would be, what other
9 documents or materials you believe were not -- were not
10 disclosed that did or may have contained as far as you
11 know impeachment quality information?

12 MR. MULLER: That would be it.

13 THE COURT: All right. Thank you. Try to get
14 him back here at 1:30 if you would, please. We'll hear
15 that testimony and try to make a ruling at that point.

16 Mr. McCormack, who's your next witness?

17 MR. McCORMACK: Officer Lydell Muldrow.

18 THE COURT: And a series of officers
19 thereafter.

20 MR. McCORMACK: Yes, sir.

21 THE COURT: Let's get the jury in the room if
22 we're all ready.

23 (The jury entered the courtroom at 10:39 a.m.)

24 THE COURT: Good morning, ladies and gentlemen.
25 I apologize for keeping you this long. The matters we

1 were discussing just became a bit more complex than I
2 had expected. But we're ready to proceed with the
3 testimony again in this matter. Mr. McCormack.

4 MR. McCORMACK: At this time I call officer
5 Lydell Muldrow.

6
7 LYDELL MULDROW,
8 having been sworn, was examined and testified as
9 follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. McCORMACK:

14 Q Officer, could you please state your name for
15 the record?

16 A Lydell Muldrow, M-U-L-D-R-O-W.

17 Q And by whom are you employed?

18 A The city of Harrisburg Police Department.

19 Q And how long have you worked for the Harrisburg
20 Police Department?

21 A Over twenty years.

22 Q Now, on December 20, 1996, were you working
23 that date?

24 A Yes.

25 Q And at some point during that day did you

1 respond to 1941 McCleaster Street?

2 A Yes. Shortly after 12:00, it was about 12:08,
3 when I received the dispatch and I arrived at
4 approximately 12:13.

5 Q And what happened when you arrived?

6 A As I arrived I observed a Capitol regional
7 ambulance parked just east of the house. We pretty
8 much arrived simultaneously. We walked in. I knocked
9 on the door. Initially I knocked on the door. I could
10 hear a commotion inside the home, sounded like crying,
11 a lot of movement inside the home. I could hear a male
12 and female voice. One responded. The male that
13 responded to the door, seated next to counsel, opened
14 the door, appeared nervous, very sweaty and I asked him
15 what happened, and he said something is wrong with my
16 girlfriend, and at this time he directed me. I entered
17 by the living room area and he directed me to a doorway
18 between the living room and was now known as the
19 bedroom area.

20 As I was approaching the bedroom area, I was
21 greeted by a Hispanic female approximately in her 40's.
22 She was very upset. She was hollering that she tried
23 CPR on her, on the lady that was in the bedroom. She
24 didn't say who it was, and I was trying to determine --
25 I directed the ambulance crew to follow me towards the

1 bedroom. I stood in the doorway. I could see a female
2 body laying on the ground, and I directed the ambulance
3 crew to go in and check her as I cleared the scene.

4 Q Now, did you make any notes, notations or
5 anything about the way the house appeared, for example,
6 how did the bedroom appear?

7 A The bedroom was in a disarray. I could see
8 that there was stuff kind of thrown about, mattresses
9 lying on the floor. Throughout the house there was
10 things packed up. It appeared that someone was moving
11 out.

12 Q Do you recall the words that the Defendant said
13 to you when he greeted you at the front door?

14 A Yes. Well, when he greeted me at the front
15 door, he said something is wrong with my girlfriend.
16 He also, as I was trying to gain preliminary
17 information in reference to the name of the victim, if
18 he knew what was wrong with her, did she have any
19 medical conditions, at this point I did not know what
20 had happened. I didn't know if there was a crime that
21 existed. I didn't know if she was dead or alive. As I
22 was asking preliminary questions walking towards the
23 bedroom area, he indicated that he tried to get -- I
24 asked him questions like, were you here? Do you know
25 what happened? And he said, well, I was trying to get

1 in all night. I couldn't get ahold of her. I couldn't
2 get in the house. I don't know what's going on. He
3 also made statements that her brother was here and I
4 asked him are you the brother. He said no. The
5 brother left and then he said -- I asked who found her,
6 and he said he did and then he said they both found
7 her, and then he flipped and said the Hispanic female
8 that was there found her. He pretty much was changing
9 back and forth in his statements to me.

10 Q You put a direct quote in your report. Do you
11 recall what your quote was in the report?

12 A I would have to review that report.

13 Q I'll show you a copy of your report. The
14 highlighted area there if you could just read that to
15 yourself and see if that refreshes your recollection.

16 A Yes.

17 Q What did the Defendant say to you, one of the
18 things that you actually took notes enough to put in
19 your report?

20 A He said I don't know what happened to her. I
21 was trying to get in the house all night but couldn't.

22 Q He also indicated to you that at one point he
23 indicated to you that he found her?

24 A Yes.

25 Q Now, at some point later did you wind up taking

1 custody of an item out of -- taken an item -- let me
2 rephrase -- taken custody of an item into evidence from
3 the Defendant?

4 A Yes. Once we secured the scene we maintained
5 witnesses until the detectives arrived. At that point
6 we did a preliminary pat down and after a brief
7 interview by the detectives I was directed to take
8 items -- check Mr. Tyshaunt Love for items that might
9 be contained in any pockets, anything that might be
10 dangerous, anything of that nature.

11 Q Did you find anything when you were going
12 through his pockets?

13 A Yes. I found some items in his pocket, pen,
14 other items that I collected.

15 Q Were those items logged into evidence?

16 A Yes, they were.

17 Q I'm going to show you what's been marked as
18 Commonwealth Exhibit No. 60. Can you get the outside
19 of the envelope. There's two items in there. Can you
20 get those items out? You mentioned a pen. I think I
21 saw you take a pen out of there?

22 A Yes.

23 Q What was the other item?

24 A It's a slip of paper. It has on the back of
25 the paper a phone number, and it also has a name and

1 then on the front of the paper it has Giant Food as a
2 receipt and it indicates some type of payroll
3 government check that appears to have been cashed
4 maybe.

5 Q On what date was the check cashed?

6 A 12/20/96, and it indicates the time here
7 appears to be 11:19.

8 Q You briefly said it at the beginning of your
9 testimony, just so we're clear, the person speaking who
10 answered the door, do you remember which door you went
11 into?

12 A Yeah. I went into what I considered to be the
13 front door, the main door right off McCleaster Street.

14 Q That opens up into what?

15 A Opens into the living room area of the home.
16 The living room area is actually -- probably consider
17 the second floor because there was a lower floor that
18 didn't appear to be a basement. It did open out into a
19 backyard type area.

20 Q Now, the person that greeted you at the door,
21 made the statements that you testified to and who that
22 receipt came from, is that person in the courtroom here
23 today?

24 A Yes. He's seated next to counsel.

25 Q Can you just tell us what he's wearing?

1 A He's wearing a white shirt, a vest, glasses.

2 MR. McCORMACK: May the record reflect that he
3 identified the Defendant.

4 THE COURT: Yes.

5 MR. McCORMACK: They are all the questions I
6 have at this time. Thank you.

7 THE COURT: Cross-examine.

8

9 CROSS EXAMINATION

10

11 BY MR. MULLER:

12 Q You indicated you received a dispatch at 12:08?

13 A I looked at the dispatch log as I reviewed some
14 of my reports prior to the proceeding. I believe it
15 was a 12:08 dispatch time.

16 Q You would have received that after dispatch
17 received the call, correct, or something to that
18 effect?

19 A Yes.

20 Q Okay.

21 A The dispatch time is the time they sent the
22 call to me. It could have been sent either through a
23 computer or by radio.

24 Q Do you recall which?

25 A In most priority type calls like this there may

1 be an assault, something of that nature -- they can
2 dispatch me both ways, dispatch me by a computer. I
3 would hear ringing in my computer or at that time it
4 was a ring and lately there's a voice now, but I
5 believe at that time it was a ring that came over my
6 computer indicating that I had a call.

7 Q The call was regarding a female not breathing?

8 A That's correct.

9 Q When you arrived at the scene, where was the
10 ambulance?

11 A The ambulance, if I could recall, they were
12 parked just east of the doorway of 1941 McCleaster
13 Street.

14 Q Were they on McCleaster Street?

15 A They were on McCleaster Street.

16 Q Was there anyone in the ambulance?

17 A I believe so. I believe when I pulled up they
18 stepped out of the ambulance and I believe we all
19 walked to the door. Normal procedure, I clear the
20 scene prior to the ambulance crew entering the home and
21 make sure there's no one present and apparent dangers
22 that come to the ambulance crew.

23 Q In your police report you stated that as you
24 entered the room one of the Capitol regional ambulance
25 attendants had examined the body and it was cold,

1 correct?

2 A Yes.

3 Q So one of the attendants was in there before
4 you, correct?

5 A If we're referring to the bedroom, that's
6 correct. I directed them in the bedroom. As I looked
7 in the bedroom I stood between the doorway -- I was
8 mostly concerned with maintaining the two witnesses and
9 getting preliminary information in reference to what
10 may have happened, you know, if the victim had a
11 medical problem, what happened; because at the time I
12 didn't know what was going on. I didn't actually
13 physically completely enter that room until the
14 ambulance crew announced that the body was cold.

15 Q So you testified you heard a commotion. What
16 do you consider a commotion?

17 A I heard a lot of what sounded like female
18 crying. I could hear a male's voice, and I couldn't
19 make out exactly what they were saying. They sounded
20 very excited, very worried. There was some movement.
21 I could hear some movement inside the home. I could
22 hear.

23 Q You knocked on the door?

24 A That's correct.

25 Q And when Mr. Love answered the door he directed

1 you to the bedroom?

2 A Not initially; he kind of stood there at first.
3 I asked him what was going on and he said something is
4 wrong with my girlfriend. At that point I began to
5 move in towards the living room, move into the house
6 and he accompanied me towards the bedroom.

7 Q You made a report of this back at that time,
8 correct?

9 A Yes.

10 Q And do you know when you would have done that
11 report?

12 A There's a time indicated on the report but
13 probably would have been an hour or maybe two hours
14 after the scene was secured.

15 Q There's a time of 13:47. What would that
16 reflect?

17 A That would reflect the time I initiated my
18 report, that's correct.

19 Q And the purpose of the report is to get
20 important facts down at the time, correct?

21 A The purpose of my reporting as the initial
22 responding officer is to detail my initial
23 observations.

24 Q When you're trained at the academy in police
25 reports, the reason you make a report is to memorialize

1 information, correct, because you may not be available?

2 A What I was told the reason to make a report is
3 to refresh my memory of the events that occurred, to
4 document information in reference to a particular
5 event.

6 Q Pertinent information?

7 A Yes.

8 Q That's the reason for the report?

9 A Yes.

10 Q On your report you state that after you asked
11 Tyshaunt if the victim had any medical problems and you
12 said moments after you arrived he indicated yes, he
13 didn't know what problems she may have had, he then
14 blurted out, I don't know what happened to her. I was
15 trying to get into the house all night but couldn't.
16 Then you have in your report, I asked him if he was the
17 one who found her and he stated yes. You had a chance
18 to review your report?

19 A Yes, I have.

20 Q That is what's contained in your report,
21 correct?

22 A At the time this incident was occurring.

23 Q That is what is contained in your report?

24 A Yes, that's correct.

25 Q Nothing about him saying the brother found her.

1 He found her. You kind of indicated he flipped-flopped
2 on that, correct?

3 A He was worried about so many things.

4 Q Yes or no.

5 A Can you repeat the question?

6 Q There's nothing in your report about him saying
7 the brother had found her, then he found her, then he
8 flipped-flopped?

9 A That's correct. No, that's not in there.

10 Q That's what you're saying today eight and a
11 half years later?

12 A I'm saying that because after I continued to
13 talk to him I determined that he was actually the one
14 that found her. He indicated that he found her. That
15 was his final statement to me. He has given numerous
16 statements.

17 Q That's not in your report that this potential
18 witness was jumbling his statement and saying
19 contradictory things?

20 A No, it wasn't.

21 Q How long have you been a police officer?

22 A Over twenty years.

23 Q So back then you would have been an employee
24 for over ten years back in 1996?

25 A Yes.

1 Q What was your rank?

2 A At that time it was corporal.

3 Q You were a patrol officer?

4 A I was a patrol supervisor.

5 Q In '96?

6 A Yes.

7 Q You said some things were packed up. You
8 mentioned some mattresses against a wall, correct?

9 A I recall seeing a mattress against the wall,
10 yes, that's correct.

11 Q What else was packed?

12 A There was some stereo equipment.

13 Q Where was that?

14 A I can't recall where the equipment was located.
15 It was equipment of things packed as I recall
16 throughout the living room area and the bedroom.

17 Q When you say packed, what are you referring to?

18 A It looked like it was taken apart and packed up
19 as if somebody was either moving it out or moving it
20 in.

21 Q Packed in the box or just things lying
22 together?

23 A I can't recall if it was in a box or not.

24 Q You don't recall that now?

25 A I can see the stereo equipment. It wasn't

1 packed in the box.

2 Q You can visually see it?

3 A I can't recall.

4 Q You can't recall which room but you recall the
5 stereo?

6 A Yes.

7 Q You went in the front door and this Hispanic
8 female was in the bedroom with the victim, correct?

9 A She was coming from the bedroom, that's
10 correct.

11 Q She was coming from the bedroom. She told you
12 she had tried to do CPR?

13 A Yes.

14 Q You indicated you took custody of these items
15 including this receipt from Giant, right?

16 A Yes.

17 Q And you read into the record what was printed
18 on there. But you have no knowledge if that's correct
19 or not. You have no knowledge of this receipt other
20 than that?

21 A Yes, other than it was printed on there.

22 Q You're not an investigator. You didn't look
23 into that or do anything with that, did you?

24 A No, I just collected it.

25 Q Did you also collect clothing?

1 A Yes, I believe I did collect his clothing.

2 Q From Mr. Love?

3 A Actually I believe I may have collected the
4 clothing, packaged it and logged it. I took it down
5 from the scene and logged it.

6 Q You logged in the clothing?

7 A Yes.

8 Q And there's a time of 2128 on that report.
9 Would that be accurate?

10 A If it says 2128, the time I logged it in, that
11 would be incorrect.

12 Q Well, I show you what I have. If you could
13 just identify what that is and what information is on
14 there.

15 A This appears to be a property record sheet.

16 Q Whose?

17 A It's a property record sheet initiated by me.
18 It has my name and my badge number and that's reporting
19 officer.

20 Q Is there a time or date on it?

21 A Yes. The date is 12/20/96 and it does reflect
22 a time of 2128 hours.

23 Q And it reflects that time in another area too,
24 does it not, on the first page?

25 A That's correct.

1 Q And where is that?

2 A That would be listed as Item 2 and also listed
3 as 2128 hours.

4 Q If I could go through with you briefly, you
5 confiscated a jacket/shirt?

6 A According to that report, I viewed that report,
7 it does appear that I collected that but if it was 2128
8 hours it has a possibility that based on the computer
9 system that --

10 Q I'm not concerned about the exact time. It's
11 just you had a hand in taking these items?

12 A It appears to be that way, yes.

13 Q You don't recall actually doing it?

14 A I don't recall.

15 Q Item No. 2 is listed as a down jacket?

16 A Yes.

17 Q Green with blue lining?

18 A Yes.

19 Q Item No. 3, off-white Fruit of the Loom
20 T-shirt?

21 A Yes.

22 Q Item No. 4, pair of jeans?

23 A Yes, long pants size 34.

24 Q Item No. 5, pair of boots?

25 A Yes.

1 Q Item No. 6, a cap?

2 A Yes.

3 Q And then 7 and 8 were I think the Commonwealth
4 introduced the receipt and the pen?

5 A Yes.

6 Q If you had taken anything else it would have
7 been in this record, correct?

8 A Yes.

9 Q And at some point you did observe the victim on
10 the floor, correct?

11 A Yes.

12 MR. MULLER: That's all I have.

13 THE COURT: Redirect?

14

15 REDIRECT EXAMINATION

16

17 BY MR. McCORMACK:

18 Q Just one thing; the thing I asked you about
19 before what he blurted out, I don't know what happened
20 to her. I was trying to get in the house all night but
21 couldn't. You put that in the report in quotation
22 marks; is that correct?

23 A Yes.

24 Q Why would you put something in quotation marks
25 in your report?

1 A Because I asked him questions more than once.
2 It's very hard. He was excited, and he appeared to be
3 nervous. Sometimes his answers were incoherent. I
4 couldn't understand what he was saying.

5 Q My question, why when you wrote the report did
6 you put quotation marks around that phrase?

7 A Later when we stopped I asked him again. He
8 indicated to me exactly what I put, that phrase. It
9 stuck out because at that time he was more coherent,
10 more calm.

11 MR. McCORMACK: I have nothing further.

12

13 RE CROSS EXAMINATION

14

15 BY MR. MULLER:

16 Q Well, when someone answers a direct question
17 you don't always put that in quotation marks?

18 A No.

19 Q So after that when you said I asked him if he
20 was the one who found her, he stated yes, the question
21 is in quotation marks?

22 A Yes.

23 Q He didn't change what he told you. He told you
24 I don't know what happened to her. I was trying to get
25 in the house all night but couldn't.

1 A Yes, yes.

2 MR. MULLER: That's all I have.

3 MR. McCORMACK: Nothing further, Your Honor.

4 THE COURT: Thank you, officer. You may step
5 down.

6 MR. McCORMACK: I call Detective Massey.

7

8 ELIJAH MASSEY,

9 having been sworn, was examined and testified as
10 follows:

11

12 DIRECT EXAMINATION

13

14 BY MR. McCORMACK:

15 Q Could you state your name for the record,
16 please?

17 A Elijah Quinn Massey, M-A-S-S-E-Y.

18 Q By whom are you employed?

19 A Harrisburg Bureau of Police, assigned to the
20 Criminal Investigation Division.

21 Q How long have you worked for the Harrisburg
22 police?

23 A Twenty-three years.

24 Q How long have you been a detective?

25 A For about 18 of those years.

1 Q Back in December of 1996, you were a detective
2 at that time?

3 A Yes.

4 Q And did you have an opportunity or an occasion
5 to respond to 1941 McCleaster Street on December 20,
6 1996 at that point in time?

7 A Yes.

8 Q Tell me, do you know when you arrived there?

9 A I arrived at about 1325 hours, which is about
10 1:25 p.m.

11 Q Now, when you arrived, what was your role at
12 the scene?

13 A To assist the lead investigator who at that
14 time was Detective Stilo, Detective Matt Taylor, assist
15 patrol officers in looking at the scene, secure
16 everything, review what had happened and talk to any
17 witnesses who were there.

18 Q What did you find when you arrived at the home?

19 A The home was, which appeared to be a garage
20 that was converted into a one-bedroom apartment, going
21 into the door of this dwelling was very dark in the
22 room initially.

23 Once we went throughout we discovered the
24 deceased female that we found. There was blood
25 throughout the entire area where the body was located.

1 Also a piece of evidence I did find in the kitchen area
2 was a plastic trash bag that was full of wet rags. It
3 was lodged between the refrigerator and I believe a
4 cupboard was also in the kitchen area.

5 Q Detective, I'm going to show you Commonwealth
6 Exhibit No. 53. It's a photograph; if you could
7 familiarize yourself with that photo at this time. Do
8 you recognize it?

9 A Yes.

10 Q What is it a photo of?

11 A Refrigerator in the kitchen area; lodged
12 between the refrigerator and the wall is a plastic
13 trash bag, a garage bag. It was light green in color.
14 This bag is full. As we look at it it was full of wet
15 rags.

16 Q Now, there was also -- when Iris's body was
17 removed from the scene was anything relating to
18 Tyshaunt Love found?

19 A Yes, what was removed under her body was an
20 identification.

21 Q You say some sort of identification was found
22 underneath where her body was?

23 A Yes.

24 Q And that identification was for who?

25 A It was from Tyshaunt Love.

1 Q And then as part of your portion of the
2 investigation -- you said you weren't the lead
3 investigator. That was Matt Taylor?

4 A Yes.

5 Q He was the second one?

6 A Yes.

7 Q You supported them. How did you support them?

8 A In addition to locating whatever we found at
9 the crime scene I spoke to several people who were
10 neighbors, who were family members of Iris Fennel.

11 MR. McCORMACK: They are all the questions I
12 have, Detective Massey, at this time.

13 THE COURT: Cross.

14
15 CROSS EXAMINATION

16
17 BY MR. MULLER:

18 Q Detective, when did you arrive at that scene?
19 Do you recall?

20 A It was December 20th of 1996 at about 1325
21 hours.

22 Q In normal time that would be?

23 A 1:25 in the afternoon.

24 Q Do you recall who was there when you arrived?

25 A I believe our patrol officers, Officer Muldrow

1 and also Officer Bailey were present. There would have
2 been other officers. I don't recall. Just those two
3 right now.

4 Q And the coroner was there I assume?

5 A The coroner had not arrived yet.

6 Q While you were there the coroner arrived?

7 A Yes.

8 Q When you arrived at the scene, do you recall
9 how you entered the apartment?

10 A I believe by way of the main entrance, which
11 would have taken me into the living room area.

12 Q Once you go through the door you're in the
13 living room?

14 A Yes.

15 Q And you talked to a number of people that day,
16 that afternoon?

17 A Yes.

18 Q Let me take it in forward in the order you have
19 it in your report. You talked to a Jeanette McCurdy,
20 correct?

21 A Yes.

22 Q When did you talk to her?

23 A At about 1:45 p.m.

24 Q And what did she tell you?

25 A She said on that day between 12:15 and 1230

1 hours she was in her backyard with her dog. She was
2 confronted by Zach -- I believe I'm pronouncing the
3 name correctly -- Socorro Roman, who are related to
4 Iris Fennel -- they requested she dial 911 because
5 something is wrong with Iris. Ms. McCurdy indicated
6 she returned inside her home and contacted Harrisburg
7 police.

8 Q And then what did she tell you?

9 A She said she heard nothing out of the ordinary
10 and could give no additional information.

11 Q The interview was concluded?

12 A Yes.

13 Q Who do you talk to next?

14 A Ms. Roman, one relative that had Ms. McCurdy
15 call 911.

16 Q Ms. Socorro we are talking about?

17 A Yes.

18 Q And when did you talk to her -- excuse me --
19 when did you talk to her?

20 A At about 4:50 p.m. same day.

21 Q In her statement she told you at that time that
22 it was Zach who saw smoke coming from the home?

23 A Yes.

24 Q And that they telephoned the home?

25 A Yes.

1 Q They decided to walk to the home and see why
2 there was smoke?

3 A That's correct.

4 Q She told you they both approached the rear
5 door?

6 A Yes.

7 Q And it was open?

8 A Yes.

9 Q As they entered Mr. Love was coming down the
10 steps?

11 A That's correct.

12 Q And he told them to call the police because
13 something was wrong with Iris?

14 A Yes.

15 Q Then you spoke to a Tamara Williams?

16 A That's correct.

17 Q You listed black female 19 years old?

18 A At the time, yes.

19 Q And she was related to the victim how?

20 A Her sister.

21 Q She relayed to you that she had called a number
22 of times, called her sister a number of times?

23 A Yes.

24 Q Let me go back. When did you talk to her?

25 A On the same day.

1 Q And she gave you times when she called and
2 didn't get an answer, correct?

3 A That's correct.

4 Q And those times were what?

5 A On the 18th she attempted to call her and
6 couldn't remember the time. But she called again on
7 the 19th, called at 10:00 p.m., and again at -- I'm
8 sorry -- 8:00 initially; the second time at 10 p.m. and
9 then again at 1 a.m., which would have been on the 20th
10 that morning.

11 Q And she didn't get an answer?

12 A Correct. She said the phone just rang.

13 Q You have another paragraph. What does that
14 say?

15 A Ms. Williams could offer nothing additional and
16 the interview concluded.

17 Q You also talked to Johanna Johnson?

18 A Yes.

19 Q And that was on the same day as well?

20 A Yes.

21 Q Ms. Johnson told you about a phone call she had
22 with the victim?

23 A That's correct.

24 Q Earlier that day or that morning?

25 A That's correct.

1 Q In fact, in the very early hours?

2 A In fact about 1:00 a.m.

3 Q She told you they talked to approximately when?

4 A They talked about 45 minutes when Ms. Johnson
5 had to hang up the telephone. She called Iris back
6 within ten minutes and they talked for -- until at
7 least approximately 0230 hours, about 2:30 a.m.

8 Q And why did she tell you the phone call
9 concluded?

10 A Because Iris heard a knock on her window.

11 MR. McCORMACK: I object to this. This is
12 inconsistent with what Johanna Johnson stated.

13 MR. MULLER: That's why it's been offered.

14 THE COURT: Are you withdrawing the question?

15 MR. MULLER: I'm move on.

16 BY MR. MULLER:

17 Q You have a note at the bottom. Do you see
18 that?

19 A Yes.

20 Q It states that she indicated that Iris said the
21 name of the male she was allowing into her home?

22 A That's correct.

23 Q She couldn't remember it. Why?

24 A Well, she said she couldn't remember the name.
25 As Iris told her she saw a mouse run across the kitchen

1 floor and that had her attention; however, Iris did
2 sound alarmed when she heard the knock at the window.

3 Q And she heard a male voice?

4 A Yes.

5 Q On the other end?

6 A Yes.

7 Q She didn't recognize it?

8 A She said she couldn't tell who it was.

9 Q Iris had told her that she was cooking chicken?

10 A Yes.

11 Q To go back a little; previously you talked to
12 two other people, a Vetta Maynard and a Wendy Harris.

13 A Yes, I did.

14 Q When did you talk to them?

15 A I talked to Wendy Harris on December 21st at
16 about 5:05 p.m.

17 Q Did you talk to her before that? I'm looking
18 at your report.

19 A What page are you looking at?

20 Q The printout says page 19 on mine. It's right
21 before you talked to Ms. Johnson. Do you see where I'm
22 referring to?

23 A That's the day of the incident when I spoke to
24 Vetta Maynard.

25 MR. McCORMACK: I object.

1 THE COURT: Wait a minute.

2 MR. McCORMACK: I object to anything concerning
3 Vetta Maynard.

4 MR. MULLER: I'm not asking about that.

5 MR. McCORMACK: You did ask about speaking with
6 Vetta Maynard.

7 MR. MULLER: Did you speak with her is not
8 hearsay.

9 THE COURT: Officer, I want you to refer to the
10 portions concerning Wendy Harris.

11 MR. MULLER: You spoke to them at 1314 hours.

12 MR. McCORMACK: You say them.

13 MR. MULLER: I'm setting the stage of the
14 foundation. I'm not asking what Maynard said. It's
15 hearsay if I ask.

16 MR. McCORMACK: May we approach? It's a
17 summary of two people talking to him at the same time.

18 THE COURT: All right.

19 (A discussion is held at sidebar off the
20 record.)

21 MR. MULLER: The Court's indulgence.

22 BY MR. MULLER:

23 Q You spoke to a Wendy Harris the next day?

24 A Yes.

25 Q And she told you that she had gone to this

1 address that morning, correct?

2 A That's correct.

3 Q When did she say she went to Iris's home that
4 morning, what time?

5 A She said at about 11:00 a.m.

6 Q How long were you involved in this
7 investigation?

8 A I believe until the 21st, maybe about the 28th
9 of December of '96.

10 Q That was the end of your involvement?

11 A Yes.

12 MR. MULLER: The Court's indulgence.

13 BY MR. MULLER:

14 Q These rags you found, you indicated that they
15 were wet?

16 A Yes.

17 Q Did they smell like anything?

18 A It was like bleach or some kind of cleaning
19 solution.

20 Q And after did you actually open the bag or did
21 you keep everything in the bag?

22 A I kept everything in the bag.

23 MR. MULLER: That's all I have.

24 THE COURT: Redirect?

25 MR. McCORMACK: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. McCORMACK:

Q On your report when you were talking to Mr. Muller on cross examination, he directed you to your interview with Johanna Johnson that you had a note at the bottom of the page?

A Yes.

Q And you started reading from that but yet you stopped at one point. You read that Ms. Johnson mentioned Iris sounded alarmed when she heard the knock. However, you didn't read the rest of that sentence. What did you write for the rest of that note? Do you see where I'm referring to?

A I'm trying to find the location. Yes, I'm here. Ms. Johnson mentioned Iris sounded alarmed when she heard a knock at the door. However, when she saw who it was she was okay.

MR. McCORMACK: Nothing further.

MR. MULLER: Nothing.

THE COURT: Thank you. Detective Massey, you may step down.

MR. McCORMACK: Your Honor, I would move at this time for the admission of Commonwealth Exhibit No. 53, a photograph which we just saw, and I would

1 also move for the admission of Commonwealth 60, which
2 was on the previous witness, the receipt of the payroll
3 check that was cashed and the pen. So I can keep up.

4 MR. MULLER: No objection.

5 THE COURT: Both are admitted.

6 (Whereupon, Commonwealth Exhibit Nos. 53 and 60
7 are admitted into the record.)

8 MR. McCORMACK: At this time I call Officer
9 Joseph Zimmerman.

10

11 JOSEPH ZIMMERMAN,
12 having been sworn, was examined and testified as
13 follows:)

14

15 DIRECT EXAMINATION

16

17 BY MR. McCORMACK:

18 Q Could you please state your name for us?

19 A Joseph A. Zimmerman.

20 Q By whom are you employed?

21 A Harrisburg Bureau of Police.

22 Q How long have you worked for the Harrisburg
23 police?

24 A Thirteen years.

25 Q Were you involved in the investigation of the

1 death of Iris Fennel on December 20, 1996?

2 A Yes, I was.

3 Q And what was your role?

4 A I transported Mr. Love to the police station.

5 Q And when you transported Mr. Love to the police
6 station, did you also participate in an interview of
7 Mr. Love?

8 A Yes, I did.

9 Q How are interviews conducted at the Harrisburg
10 Police Department, a formal interview?

11 A He was taken into the conference room, CID
12 conference room -- CID being the Criminal Investigation
13 Division -- and in the conference room we sat down and
14 talked to him about what had happened.

15 Q Is there any attempt at any point in time to
16 then put that on either tape or down on paper?

17 A Yes. First we interview them; then we take a
18 formal statement from them.

19 Q So the formal statement takes place?

20 A The formal statement is usually typed, can be
21 recorded, but it was typed here.

22 Q Who typically types it?

23 A We have a secretary that types our statements.
24 If she's not available then we do it ourselves.

25 Q When the secretary takes the statement how is

1 that done? Is she sitting there with you writing down
2 everything that's being said?

3 A From the interview room we would go to her
4 office and in her office she has a typewriter and a
5 computer.

6 Q After that is done, that interview is done, do
7 you then show it to the person who gave you the
8 statement?

9 A Yes. The person typically reviews the
10 statement and then signs it after they are done
11 reviewing it.

12 Q In this particular case, did you participate in
13 that process with this Defendant?

14 A Yes, I did.

15 Q When the statement was completed, did you
16 review the statement with the Defendant?

17 A Yes, I did.

18 Q And tell me how that happens?

19 A After we took a statement, he was reviewing it.
20 Apparently at some point he got tired of reading it so
21 I offered to read it to him. I read it out loud as he
22 followed along and he initialed each page as I read it
23 and then he signed it at the end of the statement.

24 Q Now, did you also have an opportunity to go to
25 the residence of 1941 McCleaster Street?

1 A Yes, I did.

2 Q When did you go to 1941 McCleaster Street?

3 A Initially I responded there. I didn't go to
4 the house. I initially responded I believe the next
5 day. I went with Investigator Taylor to the house.

6 Q Now, the next day you said you went to the
7 house?

8 A I believe it was actually -- if I could refer
9 to my report I could tell you exactly what time.

10 Q If you could do that for us.

11 A Yes. That would have been the 21st at 4:59
12 p.m.

13 Q Did you find anything when you went back to the
14 scene on December 21st?

15 A Yes. We found suspected crack cocaine on the
16 bedroom windowsill and a marijuana blunt in the ashtray
17 in the bedroom.

18 Q What's a marijuana blunt?

19 A A blunt would be what's left of a marijuana
20 cigarette. A blunt is -- without looking at it in this
21 case I'm not sure whether it was wrapped in a cigar.
22 It's used to smoke marijuana.

23 Q I'm going to show you what has been previously
24 marked and moved into evidence as Defense Exhibit
25 No. 1. Do you recognize what that is a photograph of?

1 A Yes, the bedroom of 1941 McCleaster Street.

2 Q The window where you found the crack cocaine --

3 A Yes.

4 Q -- is that depicted in that photograph?

5 A Yes. The windowsill is behind the blinds here,
6 the black blinds.

7 Q The blinds are black in that photograph?

8 A Yes.

9 Q Did you estimate how much crack cocaine you
10 found?

11 A I don't have it listed here in my report. I'm
12 sure it would be on a property record.

13 Q Did you put that item into evidence?

14 A Both were accounted for on a property record.
15 I'm not sure if I did that or Investigator Taylor did
16 that.

17 Q I'm going to show you a copy of an item. Can
18 you tell me what that is?

19 A It's a property record indicating that I
20 actually collected and accounted for the property via
21 the property record.

22 Q My question prior to looking for this item was,
23 did you estimate the amount of crack cocaine we were
24 talking about?

25 A Yes, I did. I have here approximately an eight

1 ball found on the bedroom windowsill.

2 Q What is an eight ball?

3 A A quantity of crack cocaine; it's actually a
4 larger chunk of crack cocaine. I'm not sure how much
5 that weighs.

6 Q As part of your role in this investigation, did
7 you have contact with a woman by the name of Stacy
8 Harris?

9 A Yes, I did.

10 Q When did you have contact with Stacy Harris?

11 A That was prior to taking Mr. Love to base.

12 Q Was that at the scene?

13 A Yes.

14 Q And I want to ask what -- I'm not asking what
15 she told you, but do you recall -- well, was she ever
16 transported to base?

17 A Yes, she was.

18 Q Do you recall what her demeanor was concerning
19 coming down and talking to the police?

20 A She was reluctant to come. She didn't want to
21 be involved.

22 Q Do you recall how old Stacy Harris was at the
23 time?

24 A I believe she was --

25 Q Would you have noted that in your report?

1 A Yes, she was 17.

2 MR. McCORMACK: I have nothing further at this
3 time.

4 THE COURT: Cross.

5

6 CROSS EXAMINATION

7

8 BY MR. MULLER:

9 Q Just so I'm clear, you were at the crime scene
10 on December 20th?

11 A Yes, I was.

12 Q The date?

13 A Actually it was the front of the crime scene.
14 I did not go to the house.

15 Q That's when you met up with Mr. Love and at the
16 same time you made contact with Stacy Harris?

17 A That's correct.

18 Q In your report does it indicate when you made
19 contact with Stacy Harris?

20 A Yes.

21 Q What time was it?

22 A It says 12:41.

23 Q Was she at the scene or did you go to her
24 place?

25 A I don't have that indicated here whether I went

1 to her place. Actually we were on a neighborhood
2 canvass. I don't believe we were at her place or she
3 was just in the neighborhood and we talked to her.

4 Q What was her address?

5 A 1954 Kensington Street.

6 Q You determined she was living at that address?

7 A Yes.

8 Q Did you determine whether she was living alone
9 or not?

10 A No, I didn't.

11 Q When you talked to her she told you that at 2
12 a.m. that morning she heard what sounded like a shot
13 fired and someone screaming, correct?

14 A That's correct.

15 Q I'm sorry. Who was with you when you went back
16 to the scene the next day?

17 A Investigator or Detective Taylor.

18 MR. MULLER: That's all I have.

19 THE COURT: Any redirect?

20 MR. McCORMACK: No redirect, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. McCORMACK: May we approach, Your Honor?

23 THE COURT: Sure.

24 (A discussion is held at sidebar off the
25 record.)

1 THE COURT: All right. Ladies and gentlemen,
2 because the next witness I'm told is anticipated to be
3 somewhat lengthier than these that we have just heard
4 this morning, we couldn't get done before the lunch
5 hour and rather than break up the testimony we'll break
6 early for lunch. We have things already scheduled.
7 That means I can't really get started with the jury
8 back in the seats before 1:30. Plan on being back at
9 that time. If I hadn't made those arrangements, we
10 would try to get back early. Enjoy your lunch break.
11 Don't talk about the case. We stand in recess.

12 (The jury exited the courtroom at 11:45 a.m.)
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1 Friday, September 16, 2005

2 Afternoon Session

3
4 THE COURT: Mr. Muller, are you going to call
5 a witness?

6 MR. MULLER: No, I'm not, Your Honor.

7 THE COURT: Over the lunch break, my staff had
8 an opportunity to review the exhibits that are marked I
9 believe Commonwealth Exhibits 54 through 59. We
10 already determined that the proposed witness,
11 Guillermina Cruz, is not available. Then the question
12 is whether or not the Defense was afforded fair
13 opportunity to cross examination and added opportunity
14 to cross-examine Ms. Cruz at the preliminary hearing
15 conducted on March 5, 2002. Her testimony from which
16 is being offered in lieu of her presence here.

17 Reading all of these statements and
18 transcripts, and so the record is also clear,
19 Mr. Barker had provided and wished to put into the
20 record I guess Exhibits 61 and 62.

21 MR. BARKER: Yes, Your Honor. Just so the
22 record is clear, I checked with Mr. Muller before I did
23 that. I didn't provide anybody with anything he didn't
24 know about.

25 THE COURT: Which are two prior preliminary